

In the Supreme Court of the Hawaiian Islands--In Equity.

KAOHE (K), AND KAINOALUA HIS WIFE VS. KEALINA (K).

Opinion of PRESTON J., appealed from.

The bill states that in September, 1886, one Kahaleole (w), died intestate at Kohala, leaving several pieces of land of the value of between three and four thousand dollars, and leaving as her sole heirs-at-law her husband, the defendant, Kealina and the plaintiff Kaohe her uncle. That the plaintiffs are over seventy years of age, feeble in body and mind, ignorant and illiterate, and were not aware at the time of the death of said Kahaleole, that the plaintiff Kaohe was entitled to a share of said lands nor of the nature, extent or value of the same. That said Kealina, well knowing the condition, mental and physical of the plaintiffs and their ignorance of their rights in the premises, and the great value and extent of the said estate, and conspiring to defraud the plaintiffs in the premises through mistake and ignorance on the part of the plaintiffs and by fraud duress, willful misrepresentation and fraudulent concealment and suppression of the facts upon the part of the defendant Kealina, upon the 27th of February, 1887, procured a deed from the plaintiffs of all their right and interest in said intestate's real estate for the nominal consideration of fifty dollars.

The bill then alleges a sale by the defendant Kealina to the defendant Hinds with notice, and prays that said deed to Kealina be declared void, that Hinds and Kealina be ordered to re-convey to plaintiffs, for an injunction and general relief.

The defendant Kealina by his answer denies the fraud charged, states there are other heirs, that plaintiffs well understood their rights, that the consideration of fifty dollars was actually paid to plaintiffs, and that they executed the same freely, voluntarily and understandingly for the consideration in said deed expressed, and that the plaintiff Kaohe before the execution of the deed to defendant, that he did not care how much the defendant should pay him, but was willing to turn over his (Kaohe's) share in the estate of defendant saying "You earned this property, so you may have it," and that the said deed was procured on account of the family connections between plaintiffs and defendant before and after the death of said Kahaleole.

At the hearing it appeared that the conveyances to the defendant Hinds were executed before the deed sought to be set aside, namely, one on the 4th of October, 1886, the consideration for which was \$1,000, and the other on the 29th January, 1887, the consideration being \$1,400, and the bill was therefore dismissed as against Hinds.

From the testimony it appeared that the plaintiff Kaohe is entitled to one-fourth of the estate of the intestate, and that about two weeks previous to the execution of the deed in question, one Geo. P. Kamaoaha, a licensed practitioner in the Police and District Courts, and who had prepared one of the deeds from Kealina to Hinds, called upon the plaintiff and as he says (affirmed the plaintiff Kaohe of his interest in the deceased's estate and that he was entitled to one-fourth, and mentioned the several lands and said, "I'll give you \$30 for your interest, I may have trouble in getting possession of these lands," that Kaohe agreed, that a deed was immediately prepared and Kaohe was taken to Dr. Wight's store to execute and acknowledge it--that when the deed was read to him and he was asked if he was willing to sell for \$30, he answered "No" and the deed was not signed. The deed to the defendant was afterwards prepared by Kamaoaha and was executed and acknowledged by the plaintiffs.

I am compelled to express my disapprobation of the conduct of Kamaoaha in the matter, which I think very reprehensible.

The testimony is contradictory as to the knowledge of the plaintiffs, of the effect of the deed to the defendant, but after considering the testimony and the various incidental circumstances, and especially after seeing the plaintiffs and hearing their testimony, I am of opinion that they are entitled to the relief asked for. The transaction is in my opinion one that a Court of equity cannot sustain.

I therefore declare that the conveyance in the bill mentioned is fraudulent and void as against the plaintiffs, that the defendant Kealina do within fourteen days execute a reconveyance of the property to the plaintiff Kaohe, that the temporary injunction be made permanent, that the defendant is entitled to be repaid the sum of fifty dollars, the consideration money paid by him, that the defendant pay to the plaintiff the costs of this suit, the plaintiff being at liberty to set off such costs against the said \$50, so far as the same will cover.

A decree to this effect will be signed on presentation.

Smith & Kinney for complainant; W. C. Achi for defendant
October 14th, 1887.

Supreme Court of the Hawaiian Islands--In Banco--October Term, 1887.

KAOHE ET AL VS. KEALINA ET AL.
On appeal from PRESTON J.

JUDGE C. J., M'CULLY, PRESTON AND BICKERTON JJ.
Opinion of the Court.

Having read the proofs and arguments of counsel and having read the opinion of Mr. Justice Preston, we adopt the same and affirm the decree appealed from.
Filed November 19th, 1884.

Supreme Court of the Hawaiian Islands--In Admiralty--In Banco--October Term, 1887.

A. S. CLEGGHORN, COLLECTOR-GENERAL VS. ONE HUNDRED AND NINETY-TWO BOTTLES OF SAM SHOO AND OTHER GOODS, LOO MUN KAI, CLAIMANT.

On appeal from PRESTON J.

JUDGE C. J., M'CULLY J., PRESTON J., BICKERTON J.
Opinion of the Court by PRESTON J.

This is an appeal from the decision of Preston J. dismissing the libel.

The decision appealed from is as follows:

"This is a libel filed by the Collector-General for the condemnation and forfeiture of certain goods alleged to have been imported in the British Bark 'Velocity' from Hong Kong and not included in the inward manifest of such vessel.

The claimant, Loo Mun Kai, the owner of the goods, filed an answer in the nature of a demurrer and at the hearing I held the libel to be sufficient.

It was admitted by Mr. Ashford on behalf of the claimant that the goods in question were not included in the manifest.

It was also admitted by Mr. Hatch on behalf of the libellant, that the claimant had been prosecuted and convicted in the Police Court of Honolulu, for concealing the goods in question, under Section 8, Chapter VII, of the Session Laws of 1886.

The argument made on behalf of the claimant, appears to me, substantially to amount to this, that the Government having prosecuted and obtained a conviction against the claimant, under a law which does not provide for a forfeiture of the goods, cannot now by another proceeding obtain such forfeiture.

Section 545 of the Civil Code provides that the commanding officer of a merchant vessel arriving from a foreign port shall within forty-eight hours after her arrival at a port of entry deliver to the Collector a true and perfect manifest of the cargo with which she is laden, with an account of the packages, etc.

Section 547 provides that "All goods imported in any vessel, and which are not included in her inward manifest, shall be liable to seizure and confiscation, and the vessel and master shall be liable to a fine not exceeding one thousand dollars.

The forfeiture is claimed under this Section:

The Section of the law of 1886, entitled "An Act supplementary to Article 26, Chapter V, of the Civil Code," reads as follows:

"Section 8. Any person who shall be in any way knowingly concerned in carrying, removing, depositing or concealing or in any manner dealing with any opium, or other article, the importation whereof is prohibited, or any dutiable goods upon which no duties have been paid, shall be punished by a fine not exceeding five hundred dollars."

It is difficult to put a construction upon this section, and it appears to me to be more difficult from the facts before me, to see how the claimant could have been convicted under it, but the Government proceeded under that Section, a breach of which does not work a forfeiture of the goods, and it therefore appears to me that they cannot by this proceeding obtain a condemnation of these goods, for the omission of the master to place them on the manifest.

I am of opinion that this libel should be dismissed and I so order."

BY THE COURT: We are of opinion that this appeal must be allowed.

We all think that the goods having become liable to forfeiture immediately upon the offense *i. e.* the delivery of the manifest by the Master to the Collector-General being committed, no action by any officer of the Government could purge such forfeiture, and therefore that the decision appealed from should be reversed, and a decree made in terms of the prayer of the libel, and it is so ordered.

F. M. Hatch for libellant; V. V. Ashford for claimant.

Honolulu, Nov. 26, 1887.

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